

AMENDED IN ASSEMBLY APRIL 16, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2247

Introduced by Assembly Member Spitzer

February 20, 2008

An act to amend Sections 1461.5, 1461.7, 2401, 2571, 2572, and 2591 of, to add Sections 2570.5, 2575, and 2576 to, to repeal Section 2573 of, and to repeal and add Sections 2570 and 2574 of, the Probate Code, relating to guardians and conservators.

LEGISLATIVE COUNSEL'S DIGEST

AB 2247, as amended, Spitzer. Guardianships and conservatorships: investments and purchase of property.

Existing law authorizes guardians and conservators, after authorization by the court, to invest the proceeds of sales and any other moneys of the estate as provided in the court order. Existing law also authorizes a guardian or conservator to invest funds of the estate in specified obligations and securities without court authorization.

This bill would provide that, except if otherwise permitted, the guardian or conservator may make investments with income and assets of the estate or the ward or conservator only after court authorization. The bill would specify that a guardian or a conservator, upon authorization by court order, may manage the estate to seek a greater return consistent with moderate risk of loss, and would permit a conservator to consider the interests of persons other than the conservatee under specified circumstances. The bill would require a guardian or conservator *of an estate that exceeds a specified value* to file an investment plan with a court ~~not more than 6 months after the issuance of letters of guardianship or conservatorship at the time of~~

filing the inventory and appraisal of the estate. The bill would require a guardian or conservator to report on investment results with each accounting filed with the court. The bill would revise and expand the list of specified obligations and securities in which a guardian or conservator may invest funds of the estate without court authorization and. The bill would permit trust companies, as defined, guardians and conservators to use covered call options and put options on long positions for securities held in the guardianship or conservatorship estate, after establishing a strategy for risk mitigation, only upon prior court authorization. The bill would broaden the class of parties to whom notice of a petition requesting court authorization to make certain investments must be given, and would permit a court to shorten the time of notice, or to dispense with notice, upon a finding of exigent circumstances. The bill would also make conforming and technical changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1461.5 of the Probate Code is amended
- 2 to read:
- 3 1461.5. Notice of the time and place of hearing on a petition,
- 4 report, or account, and a notice of the filing of an inventory,
- 5 together with a copy of the petition, report, inventory, or account,
- 6 shall be mailed to the office of the Veterans Administration having
- 7 jurisdiction over the area in which the court is located at least 15
- 8 days before the hearing, or within 15 days after the inventory is
- 9 filed, if both of the following conditions exist:
- 10 (a) The guardianship or conservatorship estate consists or will
- 11 consist wholly or in part of any of the following:
- 12 (1) Moneys received from the Veterans Administration.
- 13 (2) Revenue or profit from those moneys or from property
- 14 acquired wholly or in part from those moneys.
- 15 (3) Property acquired wholly or in part with those moneys or
- 16 from that property.
- 17 (b) The petition, report, inventory, or account is filed under any
- 18 one or more of the following provisions: Section 1510, 1601, 1820,
- 19 1861, 1874, 2422, or 2423; Article 7 (commencing with Section
- 20 2540) of Chapter 6 of Part 4; Section 2571, 2576, 2580, 2592,

1 2610, 2613, or 2620; Chapter 8 (commencing with Section 2640)
2 of Part 4; Chapter 9.5 (commencing with Section 2670) of Part 4;
3 Section 3080 or 3088; or Chapter 3 (commencing with Section
4 3100) of Part 6.

5 SEC. 2. Section 1461.7 of the Probate Code is amended to
6 read:

7 1461.7. Unless the court for good cause dispenses with such
8 notice, notice of the time and place of the hearing on a petition,
9 report, or account, together with a copy of the petition, report, or
10 account, shall be given to the same persons who are required to
11 be given notice under Section 2581 for the period and in the manner
12 provided in this chapter if both of the following conditions exist:

13 (a) A conservator of the estate has been appointed under Article
14 5 (commencing with Section 1845) of Chapter 1 of Part 3 for a
15 person who is missing and whose whereabouts are unknown.

16 (b) The petition, report, or account is filed in the conservatorship
17 proceeding under any one or more of the following provisions:

18 (1) Section 1861 or 2423.

19 (2) Article 7 (commencing with Section 2540) of Chapter 6 of
20 Part 4.

21 (3) Section 2571, 2576, 2580, 2592, or 2620.

22 (4) Chapter 8 (commencing with Section 2640) of Part 4.

23 (5) Chapter 9.5 (commencing with Section 2670) of Part 4.

24 (6) Chapter 3 (commencing with Section 3100) of Part 6.

25 SEC. 3. Section 2401 of the Probate Code is amended to read:

26 2401. (a) The guardian or conservator, or limited conservator
27 to the extent specifically and expressly provided in the appointing
28 court's order, has the management and control of the estate and,
29 in managing and controlling the estate, shall use ordinary care and
30 diligence. What constitutes use of ordinary care and diligence is
31 determined by all the circumstances of the particular estate.

32 (b) The guardian or conservator:

33 (1) Shall exercise a power to the extent that ordinary care and
34 diligence requires that the power be exercised.

35 (2) Shall not exercise a power to the extent that ordinary care
36 and diligence requires that the power not be exercised.

37 (c) Notwithstanding any other law, a guardian or conservator
38 who is not a trust company, in exercising his or her powers, may
39 not hire or refer any business to an entity in which he or she has
40 a financial interest except upon authorization of the court. Prior

1 to authorization from the court, the guardian or conservator shall
2 disclose to the court in writing his or her financial interest in the
3 entity. For the purposes of this subdivision, “financial interest”
4 shall mean (1) an ownership interest in a sole proprietorship, a
5 partnership, or a closely held corporation, or (2) an ownership
6 interest of greater than 1 percent of the outstanding shares in a
7 publicly held corporation, or (3) being an officer or a director of
8 a corporation.

9 (d) Notwithstanding any other law, a guardian or conservator
10 who is a trust company, in exercising its powers may not, except
11 upon authorization of the court, invest in securities of the trust
12 company or an affiliate or subsidiary, or other securities from
13 which the trust company or affiliate or subsidiary receives a
14 financial benefit or in a mutual fund, other than a mutual fund
15 authorized in paragraph (4) of subdivision (a) of Section 2574,
16 registered under the Investment Company Act of 1940 (Subchapter
17 1 (commencing with Section 80a-1) of Chapter 2D of Title 15 of
18 the United States Code), to which the trust company or its affiliate
19 provides services, including, but not limited to, services as an
20 investment adviser, sponsor, distributor, custodian, agent, registrar,
21 administrator, servicer, or manager, and for which the trust
22 company or its affiliate receives compensation.

23 Prior to authorization from the court, the guardian or conservator
24 shall disclose to the court in writing the trust company’s financial
25 interest.

26 SEC. 4. Section 2570 of the Probate Code is repealed.

27 SEC. 5. Section 2570 is added to the Probate Code, to read:

28 2570. Except as otherwise provided by statute, a guardian or
29 conservator may make investments with income and assets of the
30 estate of the ward or conservator only after authorization by order
31 of the court. The order may be obtained in the manner provided
32 in Section 2576.

33 SEC. 6. Section 2570.5 is added to the Probate Code, to read:

34 2570.5. (a) A guardian of the estate shall manage estate
35 investments solely for the benefit of the ward without consideration
36 for the interests of any other person. Except as provided in this
37 section, or unless otherwise permitted by the court, the guardian
38 shall manage the estate to preserve the estate.

39 (b) A conservator of the estate shall manage estate investments
40 solely for the benefit of the conservatee without consideration for

1 the interests of any other person. Except as provided in this section,
2 or unless otherwise permitted by the court, the conservator shall
3 manage the estate primarily to preserve the estate.

4 (c) If authorized by prior order of the court, the guardian may
5 manage the estate by applying relevant principles of the Uniform
6 Prudent Investor Act (Article 2.5 (commencing with Section
7 16045) of Chapter 1 of Part 4 of Division 9) and may seek a greater
8 investment return generally consistent with a moderate risk of loss
9 to the estate.

10 (d) If authorized by prior order of the court, the conservator
11 may consider the interests of other persons if the reasonably
12 persons, pursuant to the wishes of the conservatee as expressed
13 directly or through the conservatee's existing estate plan, if all
14 foreseeable needs of the conservatee will not exceed the amount
15 of the estate, considering, periodically, the size of the conservatee's
16 estate, state of health, and life expectancy.

17 (e) If authorized by a prior order of the court, the conservator
18 may manage the estate by applying relevant principles of the
19 Uniform Prudent Investor Act (Article 2.5 (commencing with
20 Section 16045) of Chapter 1 of Part 4 of Division 9), and may seek
21 a greater investment return generally consistent with a moderate
22 risk of loss to the estate.

23 (f) ~~Subsequent to (1) Except as provided in paragraph (2), at~~
24 ~~the time of the filing of the inventory and appraisal, and not more~~
25 ~~than six months after the date of issuance of letters of guardianship~~
26 ~~or of conservatorship,~~ a guardian or conservator of the estate shall
27 file an investment plan with the court, which shall include a
28 statement of the guardian's or conservator's investment goals and
29 objectives. If the guardian or conservator wishes to seek court
30 authorization for investment powers not otherwise permitted by
31 this chapter, he or she may request those powers by seeking
32 authorization of the court upon noticed petition at the time of filing
33 the investment plan.

34 (2) *A guardian or conservator of the estate is not required to*
35 *file an investment plan if the appraised value of the investment*
36 *assets of the estate is less than one hundred thousand dollars*
37 *(\$100,000), to be calculated exclusive of the value of any personal*
38 *residence, tangible personal property, and life insurance policies.*
39 *Additionally, up to one hundred thousand dollars (\$100,000) may*
40 *be placed in blocked accounts, pursuant to Sections 2453 to 2456,*

1 *inclusive, and this amount shall not be counted for the purpose of*
2 *calculating the value of the investment assets of the estate under*
3 *this subdivision.*

4 (g) A guardian or conservator of the estate shall file, with each
5 accounting, a statement of the guardian's or conservator's
6 investment goals and objectives during the period of the account
7 and currently, *and shall report upon the results achieved during*
8 *the accounting period.*

9 (h) In making and retaining investments made under this section,
10 the guardian or conservator shall take into consideration the
11 circumstances of the estate, indicated cash needs, and, if reasonably
12 ascertainable, the date of the prospective termination of the
13 guardianship or conservatorship.

14 SEC. 7. Section 2571 of the Probate Code is amended to read:

15 2571. When authorized by order of the court under Section
16 2576, the guardian or conservator may purchase the following:

17 (a) Real property in this state as a home for the ward or
18 conservatee if the purchase is for the advantage, benefit, and best
19 interest of the ward or conservatee.

20 (b) Real property as a home for those legally entitled to support
21 and maintenance from the ward or conservatee if the purchase is
22 for the advantage, benefit, and best interest of the ward or
23 conservatee and of those legally entitled to support and
24 maintenance from the ward or conservatee.

25 SEC. 8. Section 2572 of the Probate Code is amended to read:

26 2572. An order authorizing the guardian or conservator to make
27 an investment, including a purchase of real property, may authorize
28 the guardian or conservator to join with the spouse of the ward or
29 the spouse or domestic partner of the conservatee or with any other
30 person or persons in the purchase of the real property or other
31 investment, or an interest, equity, or estate therein, in coownership,
32 for cash or for credit or for part cash and part credit.

33 SEC. 9. Section 2573 of the Probate Code is repealed.

34 SEC. 10. Section 2574 of the Probate Code is repealed.

35 SEC. 11. Section 2574 is added to the Probate Code, to read:

36 2574. (a) The guardian or conservator, without authorization
37 of the court, except as specified in subdivision (b), may invest
38 funds of the estate pursuant to this section in any of the following:

39 (1) Any security issued or guaranteed by the United States, or
40 any agency of the United States.

1 (2) General obligations of the State of California.

2 (3) Investment grade corporate debt securities registered under
3 the Securities Exchange Act of 1933.

4 (4) An interest in a mutual fund registered under the Investment
5 Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

6 ~~(5) Securities listed on the New York Stock Exchange, American~~
7 ~~Stock Exchange, or NASDAQ.~~

8 ~~(6)~~

9 (5) Units of a common trust fund described in Section 1564 of
10 the Financial Code.

11 ~~(7)~~

12 (6) Any other securities identified in Section 16430 of the
13 Government Code.

14 (b) Guardians and conservators ~~who are trust companies, as~~
15 ~~defined in Section 107 of the Financial Code, are authorized to~~
16 ~~may~~ establish a prudent strategy for risk mitigation and are
17 permitted in effectuating that strategy to use covered call options
18 and put options on long positions of any securities held in the
19 guardianship or conservatorship ~~estate. All other guardians and~~
20 ~~conservators are authorized to use the risk mitigation strategies~~
21 ~~described in this subdivision~~ *estate* only upon prior authorization
22 by the court.

23 (c) Nothing in this section limits the authority of the guardian
24 or conservator to seek court authorization for any investment, or
25 to make other investments with court authorization, as provided
26 in this division.

27 SEC. 12. Section 2575 is added to the Probate Code, to read:

28 2575. The guardian or conservator shall keep all cash invested
29 in interest-bearing accounts or other investments authorized by
30 law, except any amount reasonably necessary for orderly
31 compliance with the guardian's or conservator's duties.

32 SEC. 13. Section 2576 is added to the Probate Code, to read:

33 2576. (a) The guardian or conservator, after authorization by
34 order of the court, may invest any moneys of the estate as provided
35 in the order.

36 (b) To obtain an order of the court authorizing a transaction
37 under subdivision (a), the guardian or conservator, ward or
38 conservatee, or any other interested person may file a petition with
39 the court.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. *Notice shall also be given to any relatives in the first degree of the ward or conservatee.* The court may order that the ~~notice be dispensed with~~ *period for the notice be shortened only upon a finding that exigent circumstances require it.*

(d) The court may require any proof of the fairness and feasibility of the transaction as the court determines is necessary.

(e) If the required showing is made, the court may make an order authorizing the transaction and may prescribe in the order the terms and conditions upon which the transaction shall be made.

SEC. 14. Section 2591 of the Probate Code is amended to read:

2591. The powers referred to in Section 2590 are:

(a) The power to operate, for a period longer than 45 days, at the risk of the estate a business, farm, or enterprise constituting an asset of the estate.

(b) The power to grant and take options.

(c) (1) The power to sell at public or private sale real or personal property of the estate without confirmation of the court of the sale, other than the personal residence of a conservatee.

(2) The power to sell at public or private sale the personal residence of the conservatee as described in Section 2591.5 without confirmation of the court of the sale. The power granted pursuant to this paragraph is subject to the requirements of Sections 2352.5 and 2541.

(3) For purposes of this subdivision, authority to sell property includes authority to contract for the sale and fulfill the terms and conditions of the contract, including conveyance of the property.

(d) The power to create by grant or otherwise easements and servitudes.

(e) The power to borrow money.

(f) The power to give security for the repayment of a loan.

(g) The power to purchase real or personal property.

(h) The power to alter, improve, raze, replace, and rebuild property of the estate.

(i) The power to let or lease property of the estate, or extend, renew, or modify a lease of real property, for which the monthly rental or lease term exceeds the maximum specified in Sections 2501 and 2555 for any purpose (including exploration for and

1 removal of gas, oil, and other minerals and natural resources) and
2 for any period, including a term commencing at a future time.

3 (j) The power to lend money on adequate security.

4 (k) The power to exchange property of the estate.

5 (l) The power to sell property of the estate on credit if any
6 unpaid portion of the selling price is adequately secured.

7 (m) The power to commence and maintain an action for
8 partition.

9 (n) The power to exercise stock rights and stock options.

10 (o) The power to participate in and become subject to and to
11 consent to the provisions of a voting trust and of a reorganization,
12 consolidation, merger, dissolution, liquidation, or other
13 modification or adjustment affecting estate property.

14 (p) The power to pay, collect, compromise, or otherwise adjust
15 claims, debts, or demands upon the guardianship or conservatorship
16 described in subdivision (a) of Section 2501, Section 2502 or 2504,
17 or to arbitrate any dispute described in Section 2406.

18 (q) (1) The power to manage the estate by applying relevant
19 principles of the Uniform Prudent Investor Act (Article 2.5
20 (commencing with Section 16045) of Chapter 1 of Part 4 of
21 Division 9), including, but not limited to, the power to seek a
22 greater investment return generally consistent with a moderate risk
23 of loss to the estate.

24 (2) The power to consider the interests of other persons if the
25 reasonably foreseeable needs of the conservatee will not exceed
26 the amount of the estate, considering, periodically, the size of the
27 conservatee's estate, state of health, and life expectancy.

28 (3) The power to establish a prudent strategy for investment
29 risk mitigation, including, but not limited to, the use of covered
30 call options and put options on long positions of any securities
31 held in the guardianship or conservatorship estate.